

**APPROVED MINUTES
YORK COUNTY PLANNING COMMISSION**

Regular Meeting
York Hall, 301 Main Street
August 14, 2002

MEMBERS

Andrew A. Simasek
Spencer W. Semmes
Robert D. Heavner
Nicholas F. Barba
Alfred E. Ptasznik, Jr.
Michael H. Hendricks
Ann F. White

CALL TO ORDER

Chair Michael Hendricks called the regular meeting to order at 7:00 p.m. The roll was called and the following members were present: Messrs. Heavner, Barba, Hendricks, Semmes, and Simasek. Mr. Ptasznik and Mrs. White were absent. Staff members present were James E. Barnett, Jr., J. Mark Carter, Timothy C. Cross, Amy M. Parker, and Maggie Hedberg.

REMARKS BY THE CHAIR

Chair Hendricks remarked that the Code of Virginia requires local governments to have a Planning Commission, the purpose of which is to advise the Board of Supervisors on land use and planning issues affecting the County. The responsibility is exercised through recommendations conveyed by resolutions or other official means and all are matters of public record. He indicated that the Commission is comprised of citizen volunteers, appointed by the Board, representing each voting district and two at-large members.

APPROVAL OF MINUTES

Mr. Semmes requested and received clarification on the election of the Vice Chair, and then he moved to adopt the minutes of the July 10, 2002 regular meeting. The motion carried unanimously (5:0).

CITIZEN COMMENTS

There were no citizen comments.

PUBLIC HEARINGS

Application No. UP-601-02, Richmond 20MHz, LLC, d/b/a NTELOS (continued from July 10, 2002 meeting): Request for a Special Use Permit, pursuant to Section 24.1-306 (Category 17, No. 7) of the York County Zoning Ordinance to authorize a 198-foot self-supporting communications tower with associated ground-mounted equipment within a leased area located on a portion of the property of Seaford Baptist Church, located at 1311 Seaford.

Ms. Amy Parker, assisted by an audiovisual presentation, summarized the memorandum to the Commission dated August 1, 2002, in which the staff recommended approval. She noted that the applicant has amended their permit plans to indicate access across the Seaford Baptist Church property rather than via Walkin Lane since the date of the memorandum.

Mr. Semmes remarked that the County has made efforts to reduce the visual effects of communications towers by use of camouflage and other devices.

The Chair opened the public hearing.

Sheldon Franck, Esq., Geddy, Harris, Franck & Hickman, 516 South Henry Street, Williamsburg, Virginia, represented the applicant. He named several key issues in favor of approving the tower, which included the need for wider communications coverage in the Seaford area and minimal visual impact due to the site's location with a heavily wooded area.

Ms. Rose Camm, 109 Walkin Lane, said her greatest concern was the possible use of Walkin Lane that divides her property from the proposed site as an alternative access. She said her family has maintained the private lane since 1942 and she continues to do so. She recommended that, if approved, the applicants be required to improve and maintain the road. She would be inconvenienced but would obtain no revenue from its use, she added. Ms. Camm also was concerned about health risks and possible interference with electronics reception.

In response, Mr. Hendricks indicated that access issues would be resolved at time of site plan approval.

Mr. Marc Cornell, Site Acquisition Manager for NTELOS, explained that the applicant operates more than 700 antenna sites in Virginia and North Carolina, some of which are closer to residences than the proposed site would be to Ms. Camm's house, and he was not aware of any complaints from any property owner for any type of interference. He indicated that the Federal Communications Commission (FCC) requires providers to maintain their towers to prevent interference and the applicant provides the highest level of maintenance at all times.

Mr. Heavner inquired if the applicant could meet its needs with a shorter tower, such as 140 feet tall. Mr. Cornell said adequate service provision would require a tower taller than 140 feet. He said the number of possible co-locators also would be reduced on a shorter tower.

Mr. Semmes inquired if the County could require the applicants to maintain the private lane next to Ms. Camm's property. According to Mr. James Barnett, County Attorney, while the Zoning Ordinance does not address long-term maintenance of private roads, the applicants would have to submit a site plan including any improvements needed to the road. He noted that the road's ownership and whether it is private property cannot be determined because existing land records are not clear for the lane. He noted that Ms. Camm may have an exclusive claim or an easement by virtue of having maintained it. The applicant is not guaranteed a right to use it, although the legal system could make the final determination if it became necessary.

Responding to a question from Mr. Barba regarding maximum allowable tower heights, Mr. Carter said the County ordains no maximum height for communications towers but endeavors to maximize

coverage for the applicant and for co-locators, noting there is a need for fewer towers when more co-locations are utilized.

The Chair closed the public hearing.

PC02-22

On motion of Mr. Semmes, which carried 5:0 (Mr. Ptasznik and Ms. White absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF A SPECIAL USE PERMIT TO AUTHORIZE A 198-FOOT SELF-SUPPORTING MONOPOLE COMMUNICATIONS TOWER WITH ASSOCIATED GROUND MOUNTED EQUIPMENT AT 1311 SEAFORD ROAD

WHEREAS, Richmond 20MHz, LLC d/b/a NTELOS has submitted Application No. UP-601-02, which requests a special use permit pursuant to Section 24.1-306 (Category 17, No. 7) of the York County Zoning Ordinance to authorize construction of a 198-foot freestanding monopole communications tower with associated equipment on a portion of the parcel located at 1311 Seaford Road (Route 622) and further identified as Assessor's Parcel No. 25-311; and

WHEREAS, said application has been referred to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of August, 2002 that Application No. UP-601-02 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to authorize construction of a 198-foot freestanding monopole communications tower with associated equipment on a portion of the 16.07 acre parcel of land located at 1311 Seaford Road (Route 622) and further identified as Assessor's Parcel No. 25-311, subject to the following conditions:

1. This use permit shall authorize the construction of a freestanding monopole communications tower with associated equipment on a portion of the 16.07 acre parcel of land located at 1311 Seaford Road (Route 622) and further identified as Assessor's Parcel No. 25-311.
2. The height of the tower shall not exceed 198 feet.
3. A site plan prepared in accordance with the provisions of Article V of the York County Zoning Ordinance shall be submitted to and approved by the County prior to commencement of land clearing or any construction activity on the subject property. Except as modified herein, said

plan shall be substantially in conformance with the sketch plan submitted by the applicant titled "NTELOS Telecommunications Facility; Seaford (RMB 6204-02); 1311 Seaford Road, Seaford, Virginia;" Sheets 1 – 3; dated 7/23/02, prepared by Johnson, Merriman & Thompson Engineering, received by the Planning Division July 31, 2002. As part of the site plan submittal, the applicant shall prepare a frequency intermodulation study to determine the impact on current communication transmissions for the York County Departments of Fire and Life Safety and General Services, Sheriff's Office, School Division, and the Intrac Sewer Telemetry System. Should any equipment associated with this facility at any time during the operation of the tower be found by the County to cause interference with County communications, the applicant shall be responsible for the elimination of said interference within twenty-four (24) hours of receipt of notice from the County.

4. Construction and operation of the tower shall be in conformance with the performance standards set forth in Sections 24.1-493 and 24.1-494 of the Zoning Ordinance.
5. The applicant shall submit to the County a statement from a registered engineer certifying that NIER (nonionizing electromagnetic radiation) emitted from the tower does not result in a ground level exposure at any point outside such facility that exceeds the maximum applicable exposure standards established by any regulatory agency of the U.S. Government or the American National Standards Institute.
6. A report from a registered structural or civil engineer shall be submitted indicating tower height and design, structure installation, and total anticipated capacity of the structure (including number and types of users that the structure can accommodate). These data shall satisfactorily demonstrate that the proposed tower conforms to all structural requirements of the Uniform Statewide Building Code and shall set out whether the tower will meet the structural requirement of EIA-222E, "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."
7. Alternative access to the site via Walkin Lane may be permitted provided, prior to site plan approval and satisfactory to the Zoning Administrator and County Attorney, documentation is submitted to the County verifying lawful authority of the property owner and the applicant as their lessee to use the Walkin Road right-of-way for purposes of ingress, egress, and installation and maintenance of utilities associated with the proposed telecommunications facility.
8. Advertising and signage on the tower shall be expressly prohibited, except for warning signs associated with the operation of the tower or its equipment.
9. Prior to site plan approval, the applicant shall submit written statements from the Federal Aviation Administration, Federal Communications Commission, and any other review authority with jurisdiction over the tower, stating that the proposed tower complies with regulations administered by that agency or that the tower is exempt from those regulations.
10. Evergreen planting material shall be installed for screening as deemed necessary by the Zoning Administrator pursuant to Section 24.1-240 et. seq.

11. If at any time use of the communications tower ceases, the owner of the subject property on which the tower is located shall dismantle and remove it within six (6) months after ceasing to use it, unless:
 - (1) A binding lease agreement or letter of intent with another wireless communications provider has been executed in which case an additional six (6) months shall be granted. If a letter of intent is provided, the execution date for a binding lease agreement shall not extend more than (12) months beyond the time the use of the tower ceases, or
 - (2) The County requests, in writing, that the tower be reserved for County use.
12. Accessory facilities shall not include offices, vehicle storage, or outdoor storage unless permitted by the district regulations.
13. Evidence shall be provided prior to receipt of a building permit that the Virginia State Corporation Commission has been notified that a communication facility is to be constructed.
14. The equipment building and associated equipment shall be completely enclosed by a security fence to the satisfaction of the County. To facilitate screening of the facility, green netting of a type and materials acceptable to the Zoning Administrator shall be installed on the fence surrounding the facility.
15. The communication tower shall be gray in color. Should Federal Aviation Administration requirements dictate special markings, tower lighting shall be used in lieu of multi-color painting. If painting is required, a tower maintenance plan shall be submitted to and approved by the County.
16. No microwave dishes, conical shaped antennae, or other dish shall be permitted on the tower.
17. The communications tower shall be structurally designed to accommodate no fewer than three (3) wireless users capable of supporting either PCS or cellular antenna arrays. If space is available, the County shall have the right of first refusal for leasing a space on the tower to place an antenna in support of operations consistent with the County's Department of Fire and Life Safety.
18. Significant modifications to a previously approved communications tower as determined by the Zoning Administrator shall require that a new use permit application be submitted for review in accordance with the provisions of this section. Modifications can be administratively approved if the Zoning Administrator determines the modification to be minor.

Application No. CP-8-02, York County Board of Supervisors: Request amendment to the Comprehensive Plan to change the commercial land use designation along Old Williamsburg Road (Route 238) in Lackey from Neighborhood Business to General Business and to consider extending the General Business designation to encompass a small adjacent area currently

designated High Density Residential. The subject area encompasses the area generally between Church Road and Dogwood Road.

Mr. Mark Carter provided a summary of the memorandum to the Commission dated August 1, 2002.

Mr. Semmes asked if the existing residences on property proposed for designation from High Density Residential to General Business would become nonconforming, requiring any future modifications to be approved by the Board of Supervisors. Mr. Carter said there are opportunities for expanding nonconforming uses under certain conditions that would allow continuation of the residential uses. He added there are a number of existing residences in the commercially zoned areas [in the Lackey community].

Mr. Semmes inquired about the County's rationale for the proposal, and also what the impact would be on property values and quality of life for the current residents should the application be approved. Mr. Carter said the property in the area should become more marketable as a result of approval because of an expanded range of potential uses. The Office of Economic Development has already been contacted by some prospective purchasers of some of the properties in question, according to Mr. Carter. He added that where zoning districts abut one another buffers would be required to help protect the existing residential areas.

Mr. Hendricks noted that taxes might increase for some of the current owners as a result of approval.

Mr. Heavner inquired about transitional buffers between the properties on Baptist Road and Route 238 and Mr. Carter indicated that buffers 25 feet wide would be required.

Mr. Barba inquired if the informational meeting conducted for Lackey residents in July was well attended. Mr. Carter said 45-50 people attended and their comments received were generally favorable. He said the County has received no calls since that meeting, which indicates that the attendees were provided the information they needed.

Mr. Simasek asked if public water and sewer serve the properties in question, and Mr. Carter said they are.

The Chair opened the public hearing.

Hearing no one, he closed the public hearing.

Mr. Hendricks noted that during the citizens' review of the Comprehensive Plan, the decision was essentially to leave the area alone - notwithstanding any benefits that a HUB zone might offer - because of unintended consequences. He indicated that he still leaned in that direction.

Mr. Semmes did not believe that any significant number of businesses would be created. He believed the potential negative impact on the neighborhood outweighed any positive impact on tax assessments.

Mr. Barba acknowledged that all are concerned about tax implications for current residents, but he saw this redesignation as a good opportunity for businesses and for people in the community, and was inclined to support it.

Mr. Heavner said access to Interstate 64 should be important to potential contractors. He felt the alignment and size of the area proposed to redesignate should be readdressed to enhance its development potential.

Mr. Simasek believed the long-term benefits for the community outweighed potential negative consequences.

Mr. Hendricks was not convinced that the County should rezone property to obtain general business in this particular area but could support the application entrusting the staff to work out specifics for the long-range benefit of the community.

PC02-24

On motion of Mr. Simasek, which carried 4:1 (Ptasznik and White absent, Semmes opposing), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. CP-8-02 TO AMEND THE CHARTING THE COURSE TO 2015: THE YORK COUNTY COMPREHENSIVE PLAN -TO CHANGE THE COMMERCIAL AREA DESIGNATION IN LACKEY FROM *LIMITED BUSINESS* TO *GENERAL BUSINESS* AND TO EXPAND THE *GENERAL BUSINESS* DESIGNATION TO ENCOMPASS AN ADJACENT AREA CURRENTLY DESIGNATED *HIGH DENSITY RESIDENTIAL*

WHEREAS, the York County Board of Supervisors has sponsored Application No. CP-8-02, which proposes that the commercial designation in Lackey be changed from *Limited Business* to *General Business* and that it also be expanded to encompass an adjacent area currently designated *High Density Residential*; and

WHEREAS, the Board proposed this amendment in recognition of the designation of Lackey as a HUBZone under the federal Small Business Administration program guidelines and based on a concern that the full economic potential associated with the HUBZone status may not be able to be fully realized given the limited range of commercial opportunities allowed under the current Comprehensive Plan designations; and

WHEREAS, said application has been referred to the York County Planning Commission for review and recommendation in accordance with applicable procedures; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on the application and has considered the input and recommendations provided by citizens and the staff; and

WHEREAS, the Commission has determined that it would be appropriate to recommend approval of the proposed Comprehensive Plan changes in order to set the policy framework for an expansion of the range of commercial opportunities available in the Lackey community.

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of August, 2002 that it does hereby recommend the following amendments to Charting the Course to 2015: The York County Comprehensive Plan:

1. Amend the 2015 Land Use map to change the commercial designation in Lackey from *Limited Business* to *General Business* and to extend the depth of the commercial area between Baptist Road and Dogwood Road to approximately 500 feet from Route 238, thus changing the designation of approximately 9 acres from *High Density Residential* to *General Business*.
2. Amend the text on page 90 of the Plan to read as shown in the attachment to the Planning Commission memorandum dated August 1, 2002.

Application No. ZM-66-02, York County Board of Supervisors: Request to amend the York County Zoning Map by reclassifying approximately 27 acres of land located on Old Williamsburg Road (Route 238) in the Lackey community from NB (Neighborhood Business) and R13 (High-Density Single-family Residential) to GB (General Business)

Mr. Mark Carter summarized his memorandum to the Commission dated August 1, 2002.

Mr. Simasek asked about buffers between business areas and residences that would become nonconforming, and Mr. Carter explained the areas that would require installation of 35-foot buffers. He added that some businesses would require use permits, thereby allowing the County an opportunity to mitigate external impacts by imposing certain conditions.

Responding to Mr. Semmes, Mr. Carter noted that all of the property owners who would be impacted by proposed rezonings have been notified by mail of this public hearing and none have contacted staff.

The Chair opened the public hearing. Hearing no one, the Chair closed the public hearing.

Mr. Heavner asked if the area proposed for rezoning could be expanded to include an adjacent parcel to the south. Mr. Carter indicated that the parcel in question is a wetlands mitigation site owned by the County and therefore is undevelopable.

Mr. Semmes expressed his concern about three specific properties proposed for rezoning from R13 to GB, particularly one that would be made nonconforming. He said because the Commission has recommended approving the Comprehensive Plan redesignation [Resolution PC02-24], he could support this application if the staff would contact the owner of that particular structure to be sure the owner is fully aware of potential impacts on the property and knows he has the opportunity to speak to the Board before a final decision is made. Mr. Simasek agreed, but noted that the County conducted

an informational meeting that Mr. Carter said was well attended and no property owners or residents have appeared at this meeting, which Mr. Simasek interpreted as the community's show of support.

PC02-25

On motion of Mr. Simasek, which carried 5:0 (Ptasznik and White absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. ZM-66-02 TO AMEND THE YORK COUNTY ZONING MAP BY RECLASSIFYING APPROXIMATELY 27 ACRES OF LAND LOCATED ON OLD WILLIAMSBURG ROAD (ROUTE 238) IN THE LACKEY COMMUNITY FROM NB (NEIGHBORHOOD BUSINESS) AND R13 (HIGH DENSITY SINGLE FAMILY RESIDENTIAL) TO GB (GENERAL BUSINESS)

WHEREAS, the York County Board of Supervisors has sponsored Application No. ZM-66-02, which proposes that the reclassification of certain parcels in Lackey from NB-Neighborhood Business and R13-High Density Single Family Residential to GB-General Business; and

WHEREAS, the Board proposed this amendment in recognition of the designation of Lackey as a HUBZone under the federal Small Business Administration program guidelines and based on a concern that the full economic potential associated with the HUBZone status may not be able to be fully realized given the limited range of commercial opportunities allowed under the current NB-Neighborhood Business classification; and

WHEREAS, said application has been referred to the York County Planning Commission for review and recommendation in accordance with applicable procedures; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on the application and has considered the input and recommendations provided by citizens and the staff; and

WHEREAS, the Commission has determined that it would be appropriate to recommend approval of the proposed reclassification in order to expand the range of commercial opportunities available in the Lackey community; and

WHEREAS, the Commission has determined that the proposed reclassification is consistent with the recommended amendments to the Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of August, 2002 that it does hereby recommend approval of the reclassification of the following parcels, as indicated:

?? Reclassify from NB-Neighborhood Business to GB-General Business: Parcel Nos. – 17-37A, 17-106, 17-106A, 17-107, 17-108, 17-109, 17-110, 17-110A, 17-112, 17-113, 17-114, 17-114A, 17-114B, 17-115, 17-116, 17-118, 17-119, 17-120, 17-121, 17-128, 17-129, 17-129G, 17-130

?? Reclassify from R13 to GB: Parcel Nos. – 17-67, 17-68, 17-71A

?? Reclassify from R13 and NB to GB: Parcel Nos. – 17-65, 17-66, 17-8-1, 17-8-2, 17-8-3.

Application No. UP-603-02, Virginia and Earl Young. Request for a Special Use Permit, pursuant to Section 24.1-407 of the York County Zoning Ordinance, to authorize an accessory apartment containing in excess of 25% of the total floor area of the associated single family detached dwelling located at 114 Fishermans Cove, which is zoned RR (Rural Residential), and designated for Low Density Residential development in the Comprehensive Plan.

Ms. Amy Parker presented a summary of the staff memorandum to the Commission dated August 1, 2002, aided by brief audiovisual presentations. She noted the staff recommendation of approval.

Mr. Heaver inquired if the applicants had an approved building permit for construction of the garage and Ms. Parker replied they obtained an approved permit for a garage.

Mr. Barba asked what constitutes an “accessory apartment,” and Mr. Carter explained a space requires living space and a full bath to qualify as an accessory apartment. He added that when the building permit was obtained for this particular structure the upper floor was presented as an open area; later, the applicants decided to request a use permit to convert it to an accessory apartment.

Chair Hendricks opened the public hearing.

Mr. Robert Criner, 100 Criner Lane, introduced himself to be the contractor hired by applicants whom, he explained, initially planned to use the upper floor of the garage as an office.

There were no others desiring to speak, and the Chair closed the public hearing.

PC02-26

On motion of Mr. Heavner, which carried 5:0 (Ptasznik and White absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF A SPECIAL USE PERMIT
TO AUTHORIZE A DETACHED ACCESSORY APARTMENT AT 114
FISHERMANS COVE

WHEREAS, Earl L. and Virginia S. Young, Trustees have submitted Application No. UP-603-02 to request a special use permit, pursuant to Section 24.1-407(c) of the York County Zoning Ordinance, to authorize a detached accessory apartment in conjunction with a single-family detached dwelling to be constructed on property located at 114 Fishermans Cove and further identified as Assessor's Parcel No. 25-429; and

WHEREAS, said application has been referred to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has given careful consideration to the public comments and staff recommendation with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of August, 2002, that it does hereby transmit Application No. UP-603-02 to the York County Board of Supervisors with a recommendation of approval, subject to the following conditions:

1. This use permit shall authorize a detached accessory apartment in conjunction with a single-family detached dwelling to be constructed on property located at 114 Fishermans Cove and further identified as Assessor's Parcel No. 25-429.
2. Building plans in substantial conformance with the floor plans submitted by the applicant shall be submitted to and approved by the York County Department of Environmental and Development Services, Division of Building Regulation, prior to the issuance of a building permit for the accessory apartment.
3. Not more than one (1) accessory apartment shall be permitted in conjunction with the principal dwelling unit.
4. The accessory apartment unit shall not contain in excess of 900 square feet.
5. The accessory apartment unit shall contain no more than one (1) bedroom.
6. The accessory apartment shall be served by public sewer.
7. Adequate provisions shall be made for off-street parking of motor vehicles in such a fashion as to be compatible with the character of the single-family residence and adjacent properties.
8. The accessory apartment shall not be rented separate from the principal dwelling and shall be occupied only by family members or guests of the occupant of the single-family dwelling.
9. In accordance with Section 24.1-115(b)(7) of the York County Zoning Ordinance, a certified copy of the resolution authorizing this special use permit shall be recorded at the expense of the

applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court.

Application No. ZT-67-02, York County Planning Commission: Request to amend the York County Zoning Ordinance (Chapter 24.1, York County Code) to incorporate changes made necessary by recent amendments to the Code of Virginia. Amendments to the following sections are proposed: Section 24.1-505 to reflect the five-year term of validity for site plans specified by the Code of Virginia, and, Sections 24.1-801 and 802 to reflect the State Code mandate to allow replacement of nonconforming manufactured housing units.

Mr. Mark Carter presented the summary of the staff memorandum to the Commission dated July 29, 2002. He explained that the proposed resolution is designed to bring the Zoning Ordinance into conformance with the Code of Virginia, to which some recent revisions were made, including language pertaining to nonconforming manufactured homes meeting HUD standards.

Mr. Hendricks opened the public hearing, and hearing no one he closed the public hearing.

PC02-27

On motion of Mr. Simasek, which carried 5:0 (Ptasznik and White absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. ZT-67-02 TO AMEND THE YORK COUNTY ZONING ORDINANCE (CHAPTER 24.1, YORK COUNTY CODE) BY REVISING SECTION 24.1-505 DEALING WITH SITE PLAN VALIDITY AND SECTION S 24.1-801 AND 802 DEALING WITH REPLACEMENT OF NONCONFORMING MANUFACTURED HOUSING UNITS

WHEREAS, the York County Planning Commission has sponsored Application No. ZT-67-02, which proposes the amendment of Sections 24.1-505, 801 and 802 of the York County Zoning Ordinance (Chapter 24.1, York County Code) to incorporate changes necessary to conform with the requirements of the Code of Virginia; and

WHEREAS, said application has been referred to the York County Planning Commission for review and recommendation in accordance with applicable procedures; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on the application; and

WHEREAS, the Commission has determined that it would be appropriate to recommend approval of the proposed amendments; and

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of August, 2002 that it does hereby recommend approval of the following amendments to the York County Zoning Ordinance (Chapter 24.1, York County Code):

Sec. 24.1-505. Review and approval procedures for site plans.

- (i) ~~Unless otherwise provided by section 15.1-475.D~~ Pursuant to Section 15.2-2261, Code of Virginia, final approval of a site plan submitted under the provisions of this article shall expire ~~one five~~ (5) years after the date of such approval or, if later, upon the expiration of any building permits or renewals thereof issued for any valid and unexpired site plan. ~~unless building permits have been obtained for construction in accordance therewith. When building permits have been issued, the site plan approval shall run concurrently with the validity of the building permits. The~~ application for and approval of minor modifications to an approved site plan shall not extend the period of validity of such plan. ~~zoning administrator, upon written request of the owner(s) of the property to which an approved site plan pertains, shall extend the expiration date to a total of not more than five (5) years in one (1) year increments provided, however, that~~ Notwithstanding the five (5)-year term of validity, nothing shall preclude the application, to the greatest extent possible, of the terms of any local ordinance adopted pursuant to the ~~changes may be required which are made necessary by a change or addition to the Code of Virginia,~~ Chesapeake Bay Preservation Areas Designation and Management Regulations Act, or the application of the provisions of any local ordinance adopted to comply with the requirements of the federal Clean Water Act, Section 402 (p.) of the Stormwater Program and regulations promulgated thereunder by the Environmental Protection Agency ~~a stormwater program which complies with the Federal Clean Water Act.~~

ARTICLE VIII. NONCONFORMING USES

Sec. 24.1-800. Continuation of existing uses.

If, at the time of the adoption of this chapter or any amendment thereto, any use, lot, or structure is being used in a manner or for a purpose which does not conform to the regulations of the district in which it is located, but which was legal at the time of its creation and which is not prohibited by any other law or ordinance, the use, lot, or structure may be continued, without regard to any change of occupancy or ownership. Such use, lot, or structure shall be deemed a nonconforming use and shall be subject to the provisions of this article.

Sec. 24.1-801. Nonconforming uses.

- (a) *Enlargement or extension.* A nonconforming use shall not be enlarged, extended, reconstructed, or structurally altered except in conformance with the provisions of this section.
- (1) Structural additions, either attached or detached, may be made to single-family detached residences located in non-residential districts provided that such additions comply with all applicable setback and yard requirements for the district in which located and that the minimum open space provisions for said district are observed.
- (3) No other nonconforming uses shall be enlarged or extended in any way except and unless the board shall authorize such enlargement or expansion through the issuance of a special exception which shall be processed and administered in the same way as are special use permits, provided, however, in addition to the standards set out in article I, the board shall consider whether the character of the existing use will be preserved in the event of the proposed enlargement. All owners of property located within five hundred feet (500') [150m] of the subject parcel, whether abutting or not, shall be sent notice of public hearings pertaining to the request. In no case shall the nonconforming use be permitted to expand by more than fifty percent (50%) of its size measured in building floor area on the date that it became nonconforming.
- (b) *Discontinuance.* In the event a nonconforming use ceases for any reason for a period of more than two (2) consecutive years, such nonconforming use shall not be reestablished. For purposes of this section, the term "discontinued" shall mean a cessation of a use or of any portion of a use, regardless of any intent by the user or owner to reestablish the use in the future. Discontinuance shall not be synonymous with abandonment and this shall be construed to incorporate both time and place, such that if the nonconforming use ceases in a particular structure or location for more than two (2) years even though it continues elsewhere on the same lot or parcel, the nonconforming use may not be reestablished in the structure or location where it was discontinued.
- (c) *Damage or destruction.* A nonconforming use which is damaged or destroyed by a cause beyond the control of the owner may be reestablished or reconstructed within two (2) years of the date of such damage or destruction provided, however, that such reestablishment or reconstruction shall not have the effect of enlarging or extending the nonconforming use, unless in conformance with the provisions of section 24.1-801(a) above. After two (2) years, all nonconforming use rights shall be lost. Reconstruction of nonconforming structures shall be in accordance with the terms of section 24.1-802. Nothing in this section shall be construed to prevent the removal of a valid nonconforming manufactured housing unit from property and its replacement with another comparable manufactured housing unit in accordance with section 24.1-802(c).
- (d) *Changes in use.* A nonconforming use may at any time, upon approval of a site plan submitted in accordance with article V of this chapter, be changed to a conforming use or to a use which is more nearly conforming with the regulations of the district in which it is located.

- (e) *Movement.* Except as provided in section 24.1-801(a) above, no nonconforming use shall be moved in whole or in part on the same lot or parcel or to any other lot or parcel which is not properly zoned to permit such use.
- (f) *Construction.* Except as provided in section 24.1-801(a) above, no additional structures which do not conform to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

Sec. 24.1-802. Nonconforming structures.

- (a) *Enlargement or alteration.* No structure which is nonconforming by reason of a conflict with the setback, yard, height or similar regulations of the district in which located may be enlarged, extended, reconstructed, structurally altered or moved in any way which increases its nonconformance with the applicable setback, yard, height or similar regulations of the district in which located. Except as may be provided in article II relative to front yards in built-up areas, any addition to nonconforming structures shall comply in all respects with the applicable setback, yard, height or similar regulations of the district in which located.
- (b) *Damage or destruction.* A nonconforming structure which is damaged or destroyed by a cause beyond the control of the owner may be reconstructed at the location of its original foundation, or at a location on the lot which is conforming or more nearly conforming provided that such reconstruction occurs within two (2) years of such damage or destruction and provided that a site plan submitted in accordance with article V of this chapter is approved. Should such reconstruction not occur within two (2) years, or in the event the damage or destruction, regardless of its extent, was initiated or caused by the owner of the structure, such structure may be reconstructed only in full accordance with the provisions of this chapter.
- (c) *Special provisions for manufactured housing units.* Nothing in this section shall be construed to prevent the removal of a valid nonconforming manufactured housing unit from property and its replacement with another comparable manufactured housing unit that meets the current HUD manufactured housing code, provided that the degree of nonconformity with any yard or setback requirements applicable to the district in which located does not increase. Such replacement unit shall retain the valid nonconforming status.

Application No. ST-9-02, York County Planning Commission: Application to amend the York County Subdivision Ordinance (Chapter 20.5, York County Code) to incorporate changes made necessary by recent amendments to the Code of Virginia pertaining to the term of validity for approved preliminary subdivision plans.

Mr. Mark Carter presented a brief summary of his memorandum to the Commission dated August 5, 2002. He noted that the proposal is intended to bring the Subdivision Ordinance into compliance with recently adopted language in the Code of Virginia.

The Chair opened and closed the public hearing, no one having appeared to speak.

PC02-28

On motion of Mr. Barba, which carried 5:0 (Ptasznik and White absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. ST-9-02 TO AMEND THE YORK COUNTY SUBDIVISION ORDINANCE (CHAPTER 20.5, YORK COUNTY CODE) BY REVISING SECTION 20.5-30(d) AND ADDING SECTION 20.5-31.1 TO REFLECT RECENT CHANGES IN THE CODE OF VIRGINIA

WHEREAS, the York County Planning Commission has sponsored Application No. ST-9-02, which proposes the amendment of various sections of the York County Subdivision Ordinance (Chapter 20.5, York County Code) to incorporate changes necessary to conform with the requirements of the Code of Virginia; and

WHEREAS, said application has been referred to the York County Planning Commission for review and recommendation in accordance with applicable procedures; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on the application; and

WHEREAS, the Commission has determined that it would be appropriate to recommend approval of the proposed amendments; and

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of August, 2002 that it does hereby recommend approval of the following amendments to the York County Subdivision Ordinance (Chapter 20.5, York County Code):

Sec. 20.5-30. Final plat.

- (d) Term of validity. ~~Except as otherwise provided for in section 15.1-466.A.8 of the Code of Virginia, the~~ The subdivider shall have six (6) months from the date of official notification of approval of the final plat within which to have the record plat filed and recorded by the clerk of the circuit court. Failure to do so shall make approval null and void, and the subdivider shall, ~~in accordance with the above referenced section,~~ be required to return the approved copy of the final plat to the agent in order that it may be so marked. Reapproval shall require resubmission in full compliance with the regulations then in effect. ~~Where the conditions of section 15.1-466.A.8., Code of Virginia have been met, the agent, upon written request of the subdivider received no fewer than thirty (30) days prior to the plat becoming void, and with the concurrence, by resolution, of the board may grant additional extensions of the term for good cause shown.~~ Where the subdivision involves the construction of facilities to be dedicated for

public use and the subdivider has commenced the construction of such facilities with surety approved by the agent, or where the subdivider has furnished surety in accordance with Section 20.5-108 of this chapter, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the surety agreement covering construction of required public improvements, whichever is greater.

20.5-31.1 Terms of Validity

- (a) Notwithstanding the provisions of Sections 20.5-28(d) and 29(d), if at the end of three (3) years from the date of approval of a preliminary plan a subdivider has not submitted a final subdivision plat, or has not diligently pursued approval of a submitted final plat, then the agent may, upon ninety (90) days written notice by certified mail to the subdivider, revoke the preliminary plan approval. Diligent pursuit of approval of the final subdivision plat shall mean that the subdivider has incurred extensive obligations and substantial expenses relating to the submitted final subdivision plat or modifications thereto. The agent's written notice shall cite the specific facts upon which the revocation is based. In any event, when a final subdivision plat has been timely submitted but not approved the maximum term of validity for the associated preliminary plan shall be five years.
- (b) Following the expiration or revocation of any preliminary plat pursuant to subsection (a) above, any subdivision plan considered for the subject property shall be submitted and processed in accordance with all applicable procedures for new submissions.

OLD BUSINESS

Mr. Carter indicated the draft Bylaws revisions include a paragraph that provides for automatic re-scheduling of a regular meeting cancelled because of weather or other conditions and added that the County Attorney, following his review of existing legislation, has concluded that such authority does not exist at this time. That paragraph, therefore, needs to be removed from the draft revised Bylaws, Mr. Carter said, noting that staff can recommend the Board of Supervisors request the authority as part of the County's next legislative package for the General Assembly.

Mr. Hendricks pointed out that the draft Bylaws revisions call for a second to a motion during a public hearing, which should be deleted because that no longer is the practice of the Commission. The members concurred.

PC02-29

On motion of Mr. Barba, which carried 5:0 (Ptasznik and White absent), the following resolution was adopted:

**A RESOLUTION TO AMEND THE BYLAWS OF THE YORK COUNTY
PLANNING COMMISSION**

WHEREAS, the Planning Commission adopted Bylaws on April 9, 1996; and

WHEREAS, it is the desire of the Commission to make certain amendments to the Bylaws as provided in Article XII, "Modification of Bylaws";

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of August, 2002, that it does hereby approve and adopt the document entitled, "York County Planning Commission Bylaws, Adopted April 9, 1996, Revised September 9, 1997, November 10, 1998, and August 14, 2002."

NEW BUSINESS

Mr. Carter referred to a memo prepared for the Board of Supervisors and distributed to the Commissioners that addresses fiscal deficits the Virginia Department of Transportation has incurred for road projects in the County and its proposed modification of its County roads plan. He indicated the Board might recommend some adjustments to the revisions proposed by VDOT after bringing any recommended adjustments to the Planning Commission for its consideration and recommendation.

Mr. Carter introduced and welcomed Maggie Hedberg, Planner I, a recent addition to the staff whose most recent planning experience was in Pender County, North Carolina.

STAFF REPORTS

Mark Carter reported on recent actions taken by the Board of Supervisors.

Mr. Carter noted the Commission's desire to schedule a work session to consider Yorktown design guidelines between the September and October regular meetings and said the staff will advise the members of available dates during the regular September meeting.

COMMITTEE REPORTS

Mr. Simasek reported that the Regional Issues Committee has a meeting scheduled August 27th during which it will consider renaming Route 199.

COMMISSION REPORTS AND REQUESTS

Mr. Hendricks requested information from staff relative to residential street interconnections prior to the public hearing in September for Application SW-2-02.

FUTURE BUSINESS

Mr. Carter discussed the applications received for September public hearings.

ADJOURNMENT

Chair Hendricks called adjournment at 8:52 PM.

SUBMITTED: _____/s/_____
Phyllis P. Liscum, Secretary

APPROVED: _____/s/_____
Michael H. Hendricks, Chair

DATE: September 11, 2002